UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAHRA KERMAN-MASTOUR, Plaintiff, v. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., AND FINRA REGULATION, INC., Defendants.	Docket No.: 10-CV-1633 (RJH)(RLE) **DECLARATION OF SUSAN MERRILL**

I, **SUSAN MERRILL, ESQ.**, being duly sworn, declare under penalty of perjury that the foregoing is true and correct:

1. I am currently a partner at the law firm of Bingham McCutchen LLP. Prior to joining Bingham, I was the Chief of Enforcement at the Financial Industry Regulatory Authority, where I oversaw and supervised the entire Enforcement department. I joined FINRA in 2007, after the consolidation of the member regulation and enforcement departments of the National Association of Securities Dealers ("NASD") and New York Stock Exchange ("NYSE") Regulation. I previously served as Chief of Enforcement of NYSE Regulation. I am fully familiar with the facts set forth in this declaration, which I offer in support of Defendants' Motion for Summary Judgment.

2. I became familiar with Plaintiff, Tahra Kerman-Mastour, when she worked as a staff attorney at NYSE Regulation.

3. I first learned of Plaintiff's performance deficiencies in the spring of 2005 when Susan Light, who was then the Senior Vice President and Department Head of NYSE Regulation, informed me that she did not believe Kerman-Mastour was ready to be promoted to

the position of senior special counsel. However, I decided to give Kerman-Mastour the benefit of the doubt and promote her to senior special counsel.

Kerman-Mastour's Performance and Termination

4. In 2008, I became aware that Kerman-Mastour continued to produce untimely and poor quality work product. I was also aware that she had been placed on a performance improvement plan. At that time, Kerman-Mastour reported to Richard Chin, a Director, who in turn reported to Light, who was then Senior Vice President of Enforcement. Ms. Light reported directly to me.

5. At some point during Kerman-Mastour's performance improvement plan, Light informed me that Kerman-Mastour requested a transfer to another unit. I rejected this request. I informed Light that it would not be beneficial because by this time, Kerman-Mastour had demonstrated performance deficiencies for a few years, and it was important to me that FINRA acknowledge her performance problems rather than sweep them under the table by assigning her to a new director. Because Chin had worked with Kerman-Mastour for years, he was in the best position to identify her weaknesses and assist her in improving her performance.

6. Light informed me that Kerman-Mastour's performance did not improve and she did not meet the goals of her performance improvement plan or extended performance improvement plan.

7. While on her extended performance improvement plan, Kerman-Mastour spoke with me and conveyed her belief that Chin was not treating her fairly. She and I agreed that I would have someone else review her work and provide their opinion on the quality of her memoranda. Kerman-Mastour did not mention gender or religious discrimination during this conversation. Although I was confident that Chin was a fair director and that Kerman-Mastour's

complaints likely stemmed from her discontent with receiving negative feedback, I nonetheless wanted to ensure that she felt she was being treated fairly.

8. In April 2009, I asked Scott Anderson, a Director from another unit within Enforcement, to review Kerman-Mastour's work and provide his independent assessment of the quality of her work product. I selected Anderson because he was known for his ability to mentor and train junior attorneys, and therefore he had experience in providing clear feedback.

9. I informed Kerman-Mastour that I had asked another director for his opinion of her work, but I did not disclose the identity of the independent evaluator to Kerman-Mastour.

10. In late April 2009, Anderson informed me that he found significant problems in Kerman-Mastour's memoranda in the GP matter. Among other things, he informed me that Kerman-Mastour had missed a pattern of fraudulent activity and that she lacked an understanding that GP's admission sufficed as evidence of his wrongdoing. Although I knew that Kerman-Mastour's performance was inadequate, I was astonished by the severity of Kerman-Mastour's errors, particularly given her seniority.

11. My conversation with Anderson confirmed my belief that Kerman-Mastour was a liability to FINRA. As a result, I immediately determined that FINRA had no choice but to terminate Kerman-Mastour's employment.

12. I met with Chin and Light on or about May 1, 2009, and informed them that I had decided to terminate Kerman-Mastour's employment. I made this decision solely on my own and did not ask Chin or Light for their thoughts on the subject. At this meeting, I called Chris Snyder, Associate Director of FINRA's Human Resources Department, and asked him to prepare the termination paperwork.

The Maternity Leave Committee

13. In September of 2008, I learned that several employees from Enforcement had formed an informal committee to voice their opinions regarding FINRA's maternity leave policy. The employees believed that FINRA should have adopted the same policy employed by NYSE.

14. I did not discourage the employees from meeting or from expressing their opinion. In fact, I wanted to understand their concerns and ensure that they understood that FINRA was not the same entity as NYSE, and therefore need not have or adopt the same maternity leave policy as NYSE.

15. Suzanne Elovic, whom I had promoted to Enforcement Chief Counsel and who reported to me, later informed me that the employees asked her to sit in on one of their meetings. I encouraged Elovic to attend and listen to the employees' concerns. Thereafter, Elovic conveyed to me that the employees wanted, among other things, back-up day care and the same maternity leave policy that they had at NYSE. I met with Steven Jarrett, then Senior Vice President of Human Resources, to discuss the group's concerns.

16. In light of the maternity leave group's concerns, Jarrett and FINRA's Human Resources Department drafted a memorandum explaining FINRA's maternity leave policy and indicating that FINRA was in the process of obtaining a reliable vendor for back-up daycare. The memorandum was sent to all Enforcement employees on or about October 14, 2008.

17. I am not aware of whether the maternity leave committee continued to meet after receiving the October 14, 2008 memorandum.

18. I am not aware of Plaintiff voicing her opinion regarding FINRA's maternity leave policy in any other manner.

Kerman-Mastour's Complaint to the Office of the Ombudsman

19. Prior to the filing of this lawsuit, I was not aware that Kerman-Mastour complained about Chin and Light to the Office of the Ombudsman.

Susan Merrill, Esq.

Executed on January 21, 2011